



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Smith, et al.

Group Art Unit: 3761

SERIAL NO.: 09/978,131

Examiner: Aaron J. Lewis

FILED: October 16, 2001

FOR: METHOD AND APPARATUS FOR TREATING BREATHING GASES

RESPONSE TO RESTRICTION REQUIREMENT

Mail Stop Non-Fee Amendments
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED

JUN 17 2003

TECHNOLOGY CENTER R3700

SIR:

This is a response to the May 21, 2003 first Official Action in the above application.

The Official Action consisted of a restriction requirement. Applicant provisionally elects the claims of GROUP III, claims 8-12, with traverse.

Reconsideration of the restriction requirement is respectfully requested. The Examiner, citing M.P.E.P. § 806.05(f), indicated that the process claimed can make other materially different products; namely solid blown film extruded rods and blown film extruded tubes having impermeable walls. First, it is not seen how claims limited to permeable membrane can be used to make impermeable walls. Secondly, the process requires supporting meshes for the membrane, which are without function or purpose if solid rods are to be fabricated. Thus, the conditions for restriction required by M.P.E.P. § 806.05(f) are not met.

In this connection, M.P.E.P. § 806.05(f) expressly limits the scope of the inquiry to the process and the product *as claimed*.

A process of making and a product made by the process can be shown to be distinct inventions if either or both of the following can be shown: (A) that the process *as claimed* is not an obvious process of making the product and the process *as claimed* can be used to make other and different products; or (B) that the product *as claimed* can be made by another and materially different process.

Reconsideration and favorable action is respectfully requested.

Respectfully submitted,


ROBERT M. SKOLNIK

Reg. No. 24,688

Attorney for Applicant

353 Monmouth Road

P.O. Box 22

West Long Branch, N.J. 07764

(732) 222-1027

June 3, 2003

CERTIFICATE OF MAILING

I certify that all of these documents are being deposited with the United States Postal Service on June 3, 2003 in an envelope addressed to Mail Stop Non-Fee Amendments, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Dated: June 3 2003


ROBERT M. SKOLNIK